(1916) 04 MAD CK 0013

In the Madras High Court

Subbiah Chetty alias Subramaniam Chetty and Others — APPELLANT

Vs

Kuppammal — RESPONDENT

Date of Decision : 17-04-1916

Acts Referred:
Transfer of Property Act, 1882 — Section 67

Citation : 35 Ind. Cas. 104 : (1916) 3 LW 587 : (1916) 31 MLJ 437

Judgement

1. We see no reason to differ from the Court below in the conclusion it has arrived at that there was no good ground for adjourning the case.

2. On the merits Mr. G. Krishnaswami Iyer raised practically a new point. His contention is that so long as the date fixed for the payment of the

principal money has not arrived, it is not open to the mortgagee to sue for interest alone. He relies on the provision for enhanced interest as pointing

to the inference that interest also became payable on the date that the principal fell due. As we read the document, it is clear that there was a

distinct contract to pay interest every month and a further stipulation that that monthly interest should be at a higher rate, in case the payment of

interest was not regular. Thus there was "" a contract to the contrary "" and consequently Section 67 of the transfer of Property Act does not affect

the question. The decision in Kannu v. Natesa ILR (1891) M. 477 proceeded on the construction which the learned Judges placed on the

particular document before them. That decision is not a general pronouncement on the construction of Section 87. On the other hand, the passage

in Fisher on Mortgages page 372 enunciates the true principle applicable to such cases. If there is an absolute covenant prohibiting the mortgagee

from suing before the principal becomes due, he cannot sue for the interest before that date. But if there is no such prohibition although the principal may not become payable for a considerable time, the mortgagee is entitled to sue for the interest without waiting for the due date. We

accept these propositions. In this view the decision of the Court below is right and we dismiss the second appeal with costs. Time for the payment

of the decree amount is extended to three months.

